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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,187	07/16/2003	Christopher M. Murphy	GP-303391	2331

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EXAMINER	
SORKIN, DAVID L	
ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,187	<b>Applicant(s)</b> MURPHY ET AL.	
	<b>Examiner</b> David L. Sorkin	<b>Art Unit</b> 1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-25 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-15 is/are rejected.
- 7) ☒ Claim(s) 7 and 16-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>26 November 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

*EL*

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 28 November 2004 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The non-English-language references have not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Chapman et al. (US 5,186,388). Regarding claim 1, Chapman ('388) discloses an assembly comprising a substantially hollow closed canister body (62) defining a plenum and having a material inlet (that defined in 64 and closable by 66) formed through a wall thereof; means (70) for mixing material in the plenum; and at least one transfer means (84) for drawing material from the plenum. Regarding claim 2, the transfer means is a venturi pump (84). Regarding claim 3, said venturi pump is mounted on an exterior of said canister body (see Fig. 3) and has a pump inlet (98) extending through said wall of said canister body. Regarding claim 10, a purge air outlet (82) is in communication with the plenum. Regarding claim 11, said canister body is closed at an upper end by an

upper end plate (64) having at least one inspection window formed therein. Regarding claim 12, said upper plate includes a purge air outlet (62) formed therein.

4. Claims 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollstein et al. (US 4,248,379). Regarding claim 13, Hollstein ('379) discloses a manifold (15) comprising a manifold body having a passage (54) formed therein; and a pair of pinch valves (61a-d) attached to the manifold body and in fluid communication with the passage. Regarding claim 14, each pinch valve has a generally tubular body (62) with a collar member (64) rotatably mounted thereon, each collar member including a fitting adapted to be connected to a source of compressed to a source of compressed fluid for operating said pinch valve between an open mode and a closed mode (see col. 5, lines 28-41). Regarding claim 15, each valve includes a membrane member (65) disposed in said valve body and having an exterior surface in fluid communication with a passage (67-a-d) formed in said fitting.

5. Claims 1, 5, 6, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by D'Acierno et al. (US 5,891,401). Regarding claim 1, D'Acierno ('401) discloses a canister assembly comprising a substantially hollow closed canister body (11), defining a plenum and having a material inlet (19a) formed through a wall thereof; a means for mixing (13); and at least one material transfer means (21). Regarding claim 5, a plurality of apertures are formed through the wall, at least one of said apertures extending along an axis angled with respect to both the longitudinal axis of said canister body and a plane transverse to said longitudinal axis (see Fig. 1). Regarding claim 6, said apertures are oriented in different axial directions with respect to the longitudinal

axis (see Fig. 1). Regarding claim 8, said means for mixing powder material includes a fluidizing plate (31,34,35) disposed in said canister body and dividing said canister body into an upper storage portion (15) and lower fluidization air plenum (12), and a fluidizing distribution plate (37) having a plurality of holes (38) formed therein for distributing fluidizing air received from a fluidizing air inlet in said bottom of said canister body plenum to a facing surface of said fluidizing plate (see Fig. 3). Regarding claim 10, an air purge outlet (17) is in communication with the plenum.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman ('388). The apparatus of Chapman ('388) was discussed above with regard to claim 1. Chapman ('388) does not state that the inlet of the venturi pump has an oval shape. However, as held in *In re Dailey*, 149 USPQ 47 (CCPA 1966) such a choice of shape would have been considered obvious by one of ordinary skill in the art absent persuasive evidence to the contrary. See MPEP 2144.04 (IV)(B).

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Acierno ('401). The apparatus of D'Acierno ('401) was discussed above with regard to claim 8. D'Acierno ('401) does not expressly disclose that the "fluidizing distribution plate" has a circular distribution of holes about the periphery. However, in col. 6 lines 9-22 and Fig.

4, D'Acierno ('401) discloses and explains the advantage of such a circular distribution of holes. Therefor, it is considered that it would have been obvious to one of ordinary skill in the art to have distributed the holes of the "fluidizing distribution plate" is a circular pattern about the periphery to achieve the advantage of uniform mixture as taught in col. 6 lines 9-22.

***Allowable Subject Matter***

9. Claims 7 and 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 21-25 are allowed.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS